

**NOMINATION OF CHAPMAN B. COX TO BE GENERAL
COUNSEL OF THE DEPARTMENT OF DEFENSE**

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS

SECOND SESSION

ON
NOMINATION OF
CHAPMAN B. COX TO BE GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE

APRIL 25, 1984

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NOMINATION OF CHAPMAN B. COX TO BE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WEDNESDAY, APRIL 25, 1984

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 10:08 a.m., in room SR-222, Russell Senate Office Building, Senator John Tower (chairman) presiding.

Present: Senators Tower, Thurmond, Goldwater, Warner, Nunn, and Stennis.

Also present: Senator William Armstrong.

Staff present: James F. McGovern, staff director and chief counsel; Alan R. Yuspeh, general counsel; Patrick A. Tucker, counsel; Arnold L. Punaro, staff director for the minority; Jeffrey H. Smith, minority counsel; Christine C. Dauth, chief clerk; Robert F. Bott, Michael B. Donley, George K. Johnson, Jr., and David S. Lyles, professional staff members; Patricia L. Watson, research assistant; and Marie Chaillet, staff assistant.

Also present: Les Brownlee, assistant to Senator Warner; James H. Dykstra, assistant to Senator Cohen; Jon Etherton, assistant to Senator Jepsen; Bernard R. Toon, assistant to Senator Quayle; Jeffrey B. Subko, assistant to Senator Exon; and James Steinberg, assistant to Senator Kennedy.

Chairman TOWER. Mr. Cox, your nomination reference and your biographical sketch will be entered in the hearing record at this point.

[The nomination reference and biographical sketch of Mr. Chapman B. Cox follow:]

NOMINATION REFERENCE AS IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
March 30, 1984.

Ordered, that the following nomination be referred to the Committee on Armed Services:

Chapman B. Cox, of Virginia, to be General Counsel of the Department of Defense, vice William H. Taft, IV.

BIOGRAPHICAL SKETCH OF CHAPMAN B. COX

The President, with the consent of the Senate, appointed Mr. Cox as Assistant Secretary of the Navy (Manpower and Reserve Affairs) on May 26, 1983. Prior to his appointment, he served as Deputy Assistant Secretary of the Navy (Logistics).

Mr. Cox was born in Dayton, Ohio on July 31, 1940, attended elementary school in Lakewood, Colorado, and graduated from high school at Upland, California. He re-

ceived his B.A., magna cum laude, in 1962 from the University of Southern California where he was Executive Officer of the NROTC Battalion and a member of Phi Beta Kappa. He received his Juris Doctor from Harvard Law School in 1965.

Following law school, Mr. Cox performed three years of active service as a Marine officer including duty in South Vietnam. He is currently a lieutenant colonel in the Marine Corps Reserve.

Mr. Cox practiced law from 1968 to 1972 with Adams, Duque & Hazeltine (Los Angeles) and from 1972 to 1981 with Sherman & Howard (Denver) both large interstate law firms. In order to serve the Administration, he resigned his position as managing partner of Sherman & Howard. He is a member of the Bar of the Court of Military Appeals and of the Supreme Courts of the states of California and Colorado. He served as a Section Chairman and as a member of the Board of Governors of the Colorado Bar Association. In addition to publishing articles in professional journals, he has conducted several continuing legal education courses and was a visiting lecturer at the University of Colorado Law School.

Apart from his legal practice, Mr. Cox has engaged in state legislative affairs and in political organizations and campaigns at both the state and national level. After the signing of the Camp David Accord, he performed a good will mission to Syria and Jordan in a six-member delegation sponsored by the U.S. State Department.

He is a member of the Department of Defense Reserve Forces Policy Board and the Department of the Navy Review and Oversight Council. He is also a member of the United States Naval Institute, the Navy League, and the Marine Corps Reserve Officer's Association.

Mr. Cox is married to Jeannette Korody of Anchorage, Alaska, and has two sons. He is a ruling elder of the United Presbyterian Church. His leisure time activities include skiing, tennis, basketball and backpacking.

OPENING STATEMENT BY SENATOR JOHN TOWER, CHAIRMAN

Chairman TOWER. The committee meets today to consider the nomination of Chapman B. Cox to be general counsel of the Department of Defense.

Mr. Cox is presently serving as the Assistant Secretary of the Navy for Manpower and Reserve Affairs. Mr. Cox was engaged in the private practice of law with two large firms from 1968 to 1981. He served on active duty in the Marine Corps for 3 years including a tour in South Vietnam. He is a lieutenant colonel in the Marine Corps Reserve.

Mr. Cox holds a B.A. degree from the University of Southern California and a law degree from Harvard Law School.

The committee staff has met with Mr. Cox and reviewed his financial holdings. It is my understanding that members of the committee have certain questions which they would like to ask of Mr. Cox regarding his wish to continue to provide limited professional services to certain trusts. The committee inquiry with respect to this matter is one which may intrude on the privacy of those individuals whom Mr. Cox proposes to serve.

Accordingly, I would request that members of the committee ask those questions of Mr. Cox that do not relate to these professional services in open session, and I will then ask that the committee go into executive session for the purpose of permitting members to inquire of Mr. Cox about these other matters.

Is that agreeable with you?

Senator NUNN. That is fine, Mr. Chairman. I know there will be a number of questions on these other matters. If they do involve, as I understand it, some element of attorney-client relationship, I think it is appropriate to pose those in executive session.

If it is the desire of the witness, I think it is a matter he has to advise us on.

Mr. Cox. Mr. Chairman, it depends on the questions. We may be able to handle the questions in open session.

Chairman TOWER. Let us do it in closed session.

In order to avoid any misunderstanding, I should emphasize that in my view Mr. Cox is eminently qualified to be the general counsel of the Department of Defense. To my knowledge, there is no dispute about his qualifications and we are fortunate to have someone of his experience and stature to serve in the position.

The question that has been raised deals not with Mr. Cox's qualifications to serve but, rather, with the conditions of his service.

We are pleased to have Mr. Cox with us today. Mr. Cox is accompanied by his wife, Jeannette. Jeannette, would you stand up?

We are delighted to have you here today. We welcome you.

I see that two of my distinguished colleagues are claiming the privilege of presenting the nominee to the committee. Let me first call on the member of this committee, Senator Warner.

Senator WARNER. Thank you, Mr. Chairman and members of the committee.

As a courtesy, I will defer to our colleague from Colorado as a gesture of the manner in which we greet our colleagues here before the committee.

STATEMENT OF HON. WILLIAM ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ARMSTRONG. Mr. Chairman, I am grateful to you and the committee and to my colleague from Virginia. I shall reciprocate for his courtesy by making my statement very brief. I am not one who believes the weight of an argument depends on its length.

The issue is very clear. The President in inviting Chapman B. Cox to become the general counsel of the Department of Defense has summoned to that position a man of extraordinary talent and ability and who has served with great distinction in private practice in Colorado and, of course, as members of this committee know full well, he is already serving with distinction and ability as Assistant Secretary of the Navy for Manpower and Reserve Affairs and before that was Deputy Assistant Secretary.

I am also well aware members of this committee have had occasion to work with and know Mr. Cox before, so there is little I can say except as one who has known him for a number of years, both in his capacity in the Pentagon at the present time and before that at the time he was a practicing attorney in Colorado.

I am not only pleased, I am enthusiastic about his nomination and I endorse fully what Chairman Tower has said and what I believe will be the unanimous conclusion of this committee, that he is qualified and indeed very well qualified and will serve our country well in this new position.

Mr. Chairman, I thank you for the opportunity to appear. I especially thank my colleague, Mr. Warner, for giving me the privilege of introducing him.

Chairman TOWER. Thank you.

**STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM
THE STATE OF VIRGINIA**

Senator WARNER. Mr. Chairman, I think the Nation is indeed privileged to receive the continuing services of Mr. Cox and indirectly that of his lovely wife and family.

He is what I call a recycled Secretary, having gone through extensive experience as an assistant Navy Secretary and that will indeed aid him greatly as he takes on this new assignment.

In my experience, dealing with the general counsel's department staff is a broad base of experience, and the more capable he or she is to handle that job, and he brings that to his office.

If he will just continue to listen carefully to Leonard Niederlehner who is deputy general counsel and has been, I think, for a quarter of a century, he will be a success. [Laughter.]

Chairman TOWER. Thank you, Senator Warner.

Mr. Cox, would you like to make a statement before the committee?

If you have a prepared statement you would like to submit, we can incorporate it in the record and you may summarize.

In any case you may proceed the way you see fit.

**STATEMENT OF CHAPMAN B. COX, GENERAL COUNSEL-
DESIGNATE OF THE DEPARTMENT OF DEFENSE**

Mr. Cox. Thank you, Mr. Chairman.

I do not have a written statement for the record, but I would like to make some opening remarks.

Discretion probably would indicate that with such great champions on my left and right, I should just be silent and let you express your concerns, but I think it is incumbent upon me first to make a few remarks.

First, I am deeply honored to be the President's nominee to become general counsel of the Department of Defense. I fully support his program of rebuilding the Nation's defense in order to secure a lasting peace.

As a member of the management team in the Navy Department for the last 3 years, I devoted my energy to the rebuilding effort in the Navy and Marine Corps and now I am challenged by this new opportunity to become a member of Secretary Weinberger's team as he continues the rebuilding effort in the total defense program.

The second brief point I would like to make is that I believe that I understand the nature and the significance of the responsibilities of the general counsel and I believe that I possess the basic qualifications to perform them.

While I am not an expert in some of the substantive areas with which the office deals, I believe my background will serve me well and I pledge to you all an unfailing devotion to a standard of excellence and integrity.

So, in conclusion, I would just like to say that I am humbled by the President's nomination and I am grateful for the opportunity to continue to serve in the elected Government.

I look forward to becoming a member of Secretary Weinberger's team and to working with this committee.

Thank you.

Chairman TOWER. Thank you, sir.

I will now yield to my distinguished colleague, Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

I agree with you that the questions we will have in executive session do not relate to Mr. Cox's ability or qualifications to serve in this important position, but rather to his holdings in terms of possible conflict of interest, particularly in terms of client-attorney matters, but that has nothing to do with his qualifications.

I am certainly hopeful we can clarify that in executive session.

Mr. Cox, can you tell me a little bit about the type of law practice you engaged in?

I understand you practiced in Colorado before you came to the Navy Department. Is that right?

Mr. Cox. Yes, sir.

Senator NUNN. What kind of law and tell us a little bit about your legal experience?

Mr. Cox. The first 3 years of my practice was as a judge advocate in the U.S. Marine Corps. I tried probably at least 100 felony cases in the Marine Corps, both as defense counsel and as trial counsel.

For 11 months of that time I was a staff judge advocate to a commanding general. I say that just to give you some indication that I have a background in the military justice aspect of this new job.

Senator NUNN. That is when you were on active duty?

Mr. Cox. On active duty from 1965 to 1968.

In my private practice I practiced both in southern California and in Denver, CO.

In southern California the first part of my practice was as an associate lawyer getting a broad spectrum of training basically in trial matters.

I also began to specialize, before I left that firm, in the area of real estate financing and handled quite a few financial transactions of major scope.

When I moved to Colorado, my practice changed and I began to specialize in the fields of taxation, contested estates, and administration of trusts and estates.

I developed a specialty in that area that involved some national work with the American Bar Association and Committee for the Uniform Probate Code, both nationally and in the Colorado Legislature where it was adopted. During this time I led the Colorado Bar Association's effort for establishment of the code in Colorado, in the State legislature.

In the latter part of my practice in Colorado I was selected by the firm to become the managing partner of the firm. So for the last 2 years probably 80 percent of my time was spent in managing the business of a large law firm.

I did continue to practice law in a very narrow specialty, which was contested estate matters in the trial aspects and also in the tax aspects of contested estate matters. But 80 percent of my time was spent managing the business of a firm which at that time had 100 lawyers in offices in 2 States and was negotiating to merge with a firm in another State.

Senator NUNN. Could you tell us just briefly what you have done in your most recent position, a general job description, as you un-

derstand it, and also whether you have continued to engage in any legal practice in your most recent governmental position.

Mr. Cox. As Assistant Secretary of the Navy for Manpower and Reserve Affairs, I have a statutory responsibility to make decisions on matters which may be characterized as judicial in nature.

I make decisions on appeals for correction of naval records. I make decisions on appeals about promotion matters. I also work very carefully with the general counsel of the service on matters relating to all kinds of discipline and personnel matters.

Also, in that job there is a heavy legislative burden because most of the compensation initiatives, budget authorization, and appropriation is done by special statute. So in a way I drew upon my legal background, but I did not practice law, so to speak.

I relied more on the general counsel for the legal advice. In that way I was a client. But I think a lawyer has a particular ability to be a good client, hopefully, and understand the issues, and help the lawyers find good solutions to the problems.

I don't know if I have thoroughly answered your question.

Mr. NUNN. That is fine.

I will reserve the rest of my questions.

Chairman TOWER. Senator Goldwater.

Senator GOLDWATER. I have no questions.

Chairman TOWER. Senator Stennis.

Senator STENNIS. Mr. Cox, you have a very impressive record. I feel that you are well prepared in background, but what is your courtroom experience, the trial of cases?

Mr. Cox. I tried approximately 80 to 100 felony cases when I was on military duty. In my civilian practice in California I think I tried—and I am just guessing at this—around a dozen cases; in my practice in Colorado, probably a dozen cases.

Senator STENNIS. That was in the regular trial courts where you carried the responsibility?

Mr. Cox. Yes, sir.

Senator STENNIS. Making decisions?

Mr. Cox. Preparing witnesses, filing briefs, going to depositions, dealing with the jury.

Senator STENNIS. I hope you don't have to try one in this position, but I think that is where lawyers are made, trying cases.

Mr. Cox. I agree with you 100 percent. In fact, the lawyers I hired to be on my staff in my present job were required to have trial experience before I hired them.

Senator STENNIS. That sounds good.

Now, how many lawyers do you have on your staff as chief counsel for the Department of Defense?

Mr. Cox. On the immediate staff there are approximately 25 lawyers. That is in the Office of the General Counsel of the Defense Department. There are over 5,000 lawyers in the entire Department legal network. Around 4,000 of those are military lawyers who report through their command chains.

Senator STENNIS. Those you are associated with and will be responsible for what they do or don't do?

Mr. Cox. There are about 25 in my immediate staff.

Senator STENNIS. Well, you are accustomed to working with a number of lawyers that way?

Mr. COX. Yes, sir.

Senator STENNIS. That is all I have, Mr. Chairman.

Chairman TOWER. Senator Thurmond.

Senator THURMOND. Thank you very much, Mr. Chairman.

Mr. COX, it is a pleasure to have you here.

Mr. COX. Thank you, sir.

Senator THURMOND. As the President's nominee to be the general counsel of the Department of Defense, the position to which you have been nominated, bears a great deal of responsibility, of course, and you are familiar with this.

I am pleased to note that you are a veteran of the Vietnam conflict and a lieutenant colonel in the Marine Corps Reserve which I think gives you an insight which the average person would not have.

As you know, the responsibilities of the general counsel are varied and many. I am just wondering what you perceive probably to be the greatest challenge facing the general counsel at this point in time?

Mr. COX. There are quite a few of them, sir. I guess in terms of the macro perspective, the most important thing for me to do well is to represent the Secretary, to advise him, and to be his advocate, if you will, on the intragovernmental legal issues with other Departments, with the White House and the executive branch, and with this committee.

In terms of specific issues that are challenges, I think there is one issue that is right now before the Congress that is a challenge. I don't have the answer, but I am ready to accept the challenge and help Secretary Taft and Secretary Weinberger deal with it. That is the warranty issue.

Another challenge that concerns me is the dilemma that the War Powers Act creates. We need some kind of mechanism to insure that there is public support of involvement in deadly conflict and yet what we have troubles us and binds the President's hands in executing his foreign policy. That is a real challenge. In that it has legal implications, the Secretary will call upon me to help him work through the problem.

Another challenge is the problem that we have with leaks of classified information. I do not have the answer for you today on that, but I recognize the problem. It is very difficult to enforce the existing law because it is such a heavy law. In order to get a conviction, you have to prove a specific intent to aid an enemy or to harm the United States and impose the penalty of a treason conviction.

There is no lesser kind of offense that is available to create deterrence. So, that is a problem and something we are going to be working on.

There are some other issues that I am aware of, but these I guess would be the three that I would think are the principal challenges.

Senator THURMOND. As you know, we are having considerable debate over the weapons program. I am wondering if you feel that this debate and also public disclosures of price overcharges by some Defense contractors have adversely impacted upon public support for defense spending?

Mr. Cox. Yes, sir. I don't consider that a legal question, but my personal impression is that they do and to the extent that we need better legal procedures to prevent those things from happening, I would be happy to work on that challenge.

I think that a big part of the problem is making sure our management mechanisms are in order and are well disciplined to prevent it from happening. But there may be some changes in the law that are necessary also; for example, the warranty issue.

Senator THURMOND. Our defense contractors in this country I think have rendered our Nation a great service. However, the actions of a few have brought considerable criticism of the defense contractors in general.

I am wondering what you feel should be the Department of Defense position to contractors who overcharge unrealistic prices for parts?

Mr. Cox. All I can say at this point is that I support the action that was taken by my Secretary in the Navy to recoup the overcharges and I think that is one thing that we should be more aggressive on. That does involve legal proceedings.

I also was very closely involved with my prior boss, in the Shipbuilding and Logistics Secretariat of the Navy, in taking a very aggressive posture against Electric Boat when they filed their \$200 million lawsuit 2 years ago.

In that case, we filed a counterclaim against them which generated a settlement, basically a withdrawal, of their claim.

So, I think there are some things in the legal area that can be done to support very aggressive management techniques against this kind of private practice.

Senator THURMOND. Are you willing to be aggressive and without favor take such action as may be necessary to see that every step taken in the Defense Department is aboveboard and is conducted in a nominal manner?

Mr. Cox. Absolutely, sir. I invite you to check with my professional acquaintances to confirm my willingness to be strong in that respect.

Senator THURMOND. A lot of people are honest and they would not commit an unlawful act, but at the same time sometimes they are not as aggressive as they should be maybe to uncover wrongdoing.

Do you think you can be aggressive?

Mr. Cox. My military training and professional training have taught me that the best defense is a good offense and I will abide by that. I will be aggressive.

Senator THURMOND. Some of those who have been strong for defense have been handicapped sometimes by some actions taken by defense contractors which they should be ashamed of and at the same time it causes explanations and causes talk and hurts the entire defense program.

On these matters I feel some of the people in the Pentagon could be more aggressive in helping prevent those things from happening.

Mr. Cox. I understand your position, sir. I agree with it.

Senator THURMOND. That is all I have.

Thank you, Mr. Chairman.

Chairman TOWER. Senator Warner.

Senator WARNER. I have no questions, Mr. Chairman.

Chairman TOWER. Mr. Cox, would you agree to appear before this committee or any other appropriate committee of the Congress when summoned to do so to testify or respond to any questions on matters pertaining to your responsibility in the Department of Defense?

Mr. Cox. Yes, sir.

Chairman TOWER. Are there any further questions of members of the committee?

Then, Mr. Cox, we will ask you to stay around for a few minutes. We would like to hear from our other nominee and then we will go into closed session to dispose of these other matters which I am confident we can dispose of.

Mr. Cox. Thank you, sir.

[Whereupon, at 10:30 a.m., the committee proceeded to other business.]

[The nomination of Chapman B. Cox was reported to the Senate by Senator Warner on April 26, 1984, with the recommendation that the nomination be confirmed. The nomination was confirmed by the Senate on May 1, 1984.]

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